

REFERENCE TITLE: condominiums; homeowners' associations; records; fees

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1007

Introduced by
Senator Waring

AN ACT

AMENDING SECTIONS 33-1248, 33-1258, 33-1260, 33-1804, 33-1805 AND 33-1806,
ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1248, Arizona Revised Statutes, is amended to
3 read:

4 33-1248. Open meetings: exceptions

5 A. Notwithstanding any provision in the declaration, bylaws or other
6 documents to the contrary, all meetings of the association and board of
7 directors are open to all members of the association or any person designated
8 by a member in writing as the member's representative and all members or
9 designated representatives so desiring shall be permitted to attend and speak
10 at an appropriate time during the deliberations and proceedings. The board
11 may place reasonable time restrictions on those persons speaking during the
12 meeting but shall permit a member or a member's designated representative to
13 speak before the board takes formal action on an item under discussion in
14 addition to any other opportunities to speak. The board shall provide for a
15 reasonable number of persons to speak on each side of an issue. Any portion
16 of a meeting may be closed only if that portion of the meeting is limited to
17 consideration of one or more of the following:

18 1. Legal advice from an attorney for the board or the association. On
19 final resolution of any matter for which the board received legal advice or
20 that concerned pending ~~or contemplated~~ litigation, the board may disclose
21 information about that matter in an open meeting except for matters that are
22 required to remain confidential by the terms of a settlement agreement or
23 judgment.

24 2. Pending ~~or contemplated~~ litigation.

25 3. Personal, health and financial information about an individual
26 member of the association, an individual employee of the association or an
27 individual employee of a contractor for the association.

28 4. Matters relating to the job performance of, compensation of, health
29 records of or specific complaints against an individual employee of the
30 association or an individual employee of a contractor of the association who
31 works under the direction of the association.

32 B. Notwithstanding any provision in the condominium documents, all
33 meetings of the association and the board shall be held in this state. A
34 meeting of the association shall be held at least once each year. Special
35 meetings of the association may be called by the president, by a majority of
36 the board of directors or by unit owners having at least twenty-five per
37 cent, or any lower percentage specified in the bylaws, of the votes in the
38 association. Unless otherwise provided in the articles or the bylaws of the
39 association, not fewer than ten nor more than fifty days in advance of any
40 meeting of the unit owners, the secretary shall cause notice to be hand
41 delivered or sent prepaid by United States mail to the mailing address of
42 each unit or to any other mailing address designated in writing by the unit
43 owner. The notice of any meeting of the unit owners shall state the time and
44 place of the meeting. The notice of any special meeting of the unit owners
45 shall also state the purpose for which the meeting is called, including the

1 general nature of any proposed amendment to the declaration or bylaws, any
2 changes in assessments that require approval of the unit owners and any
3 proposal to remove a director or officer. The failure of any unit owner to
4 receive actual notice of a meeting of the unit owners does not affect the
5 validity of any action taken at that meeting.

6 C. Unless otherwise provided in the articles or bylaws of the
7 association, for meetings of the board of directors that are held after the
8 termination of declarant control of the association, notice to unit owners of
9 meetings of the board of directors shall be given at least forty-eight hours
10 in advance of the meeting by newsletter, conspicuous posting or any other
11 reasonable means as determined by the board of directors. An affidavit of
12 notice by an officer of the association is prima facie evidence that notice
13 was given as prescribed by this section. Notice to unit owners of meetings
14 of the board of directors is not required if emergency circumstances require
15 action by the board before notice can be given. Any notice of a board
16 meeting shall state the time and place of the meeting. The failure of any
17 unit owner to receive actual notice of a meeting of the board of directors
18 does not affect the validity of any action taken at that meeting.

19 D. This section does not apply to timeshare plans or associations that
20 are subject to chapter 20 of this title.

21 Sec. 2. Section 33-1258, Arizona Revised Statutes, is amended to read:

22 33-1258. Association financial and other records; applicability

23 A. Except as provided in subsection B of this section, all financial
24 and other records of the association shall be made reasonably available for
25 examination by any member or any person designated by the member in writing
26 as the member's representative. **THE ASSOCIATION SHALL NOT CHARGE MORE THAN**
27 **TWENTY DOLLARS PER HOUR FOR EACH HOUR INCURRED IN MAKING MATERIAL AVAILABLE**
28 **FOR REVIEW.**

29 B. Books and records kept by or on behalf of the association and the
30 board may be withheld from disclosure to the extent that the portion withheld
31 relates to any of the following:

32 1. Privileged communication between an attorney for the association
33 and the association.

34 2. Pending ~~or contemplated~~ litigation.

35 3. Meeting minutes or other records of a session of a board meeting
36 that is not required to be open to all members pursuant to section 33-1248.

37 4. Personal, health and financial records of an individual member of
38 the association, an individual employee of the association or an individual
39 employee of a contractor for the association.

40 5. Records relating to the job performance of, compensation of, health
41 records of or specific complaints against an individual employee of the
42 association or an individual employee of a contractor of the association who
43 works under the direction of the association.

1 C. The association shall not be required to disclose financial and
2 other records of the association if disclosure would violate any state or
3 federal law.

4 D. This section does not apply to an association for a timeshare plan
5 that is subject to chapter 20 of this title.

6 Sec. 3. Section 33-1260, Arizona Revised Statutes, is amended to read:
7 33-1260. Resale of units; information required; applicability;
8 definition

9 A. For condominiums with fewer than fifty units, a unit owner shall
10 mail or deliver to a purchaser within ten days after receipt of a written
11 notice of a pending sale of the unit, and for condominiums with fifty or more
12 units, the association shall mail or deliver to a purchaser within ten days
13 after receipt of a written notice of a pending sale that contains the name
14 and address of the purchaser, all of the following:

15 1. A copy of the bylaws and the rules of the association.

16 2. A copy of the declaration.

17 3. A dated statement containing:

18 (a) The telephone number and address of a principal contact for the
19 association, which may be an association manager, an association management
20 company, an officer of the association or any other person designated by the
21 board of directors.

22 (b) The amount of the common expense assessment for the unit and any
23 unpaid common expense assessment, special assessment or other assessment, fee
24 or charge currently due and payable from the selling unit owner.

25 (c) A statement as to whether a portion of the unit is covered by
26 insurance maintained by the association.

27 (d) The total amount of money held by the association as reserves.

28 (e) If the statement is being furnished by the association, a
29 statement as to whether the records of the association reflect any
30 alterations or improvements to the unit that violate the declaration. The
31 association is not obligated to provide information regarding alterations or
32 improvements that occurred more than six years before the proposed sale.
33 Nothing in this subdivision relieves the seller of a unit from the obligation
34 to disclose alterations or improvements to the unit that violate the
35 declaration, nor precludes the association from taking action against the
36 purchaser of a unit for violations that are apparent at the time of purchase
37 and that are not reflected in the association's records.

38 (f) If the statement is being furnished by the unit owner, a statement
39 as to whether the unit owner has any knowledge of any alterations or
40 improvements to the unit that violate the declaration.

41 (g) A statement of case names and case numbers for pending litigation
42 with respect to the unit filed by the association against the unit owner or
43 filed by the unit owner against the association. The unit owner or the
44 association shall not be required to disclose information concerning the

pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A statement that provides "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

B. A purchaser or seller who is damaged by the failure of the unit owner or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the unit owner or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the unit owner a ~~reasonable~~ fee OF NO MORE THAN TWENTY CENTS PER PAGE OF MATERIAL COPIED AND TWENTY DOLLARS PER HOUR OF LABOR INCURRED to compensate the association for the costs incurred in the preparation of a statement furnished by the association pursuant to this section. The association shall make available to any interested party the amount of any fee established from time to time by the association.

D. A sale in which a public report is issued pursuant to sections 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt from this section.

E. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

F. For the purposes of this section, unless the context otherwise requires, "unit owner" means the seller of the condominium unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

Sec. 4. Section 33-1804, Arizona Revised Statutes, is amended to read:

33-1804. Open meetings; exceptions

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the association and board of directors are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak

1 at an appropriate time during the deliberations and proceedings. The board
2 may place reasonable time restrictions on those persons speaking during the
3 meeting but shall permit a member or member's designated representative to
4 speak before the board takes formal action on an item under discussion in
5 addition to any other opportunities to speak. The board shall provide for a
6 reasonable number of persons to speak on each side of an issue. Any portion
7 of a meeting may be closed only if that closed portion of the meeting is
8 limited to consideration of one or more of the following:

9 1. Legal advice from an attorney for the board or the association. On
10 final resolution of any matter for which the board received legal advice or
11 that concerned pending ~~or-contemplated~~ litigation, the board may disclose
12 information about that matter in an open meeting except for matters that are
13 required to remain confidential by the terms of a settlement agreement or
14 judgment.

15 2. Pending ~~or-contemplated~~ litigation.

16 3. Personal, health and financial information about an individual
17 member of the association, an individual employee of the association or an
18 individual employee of a contractor for the association.

19 4. Matters relating to the job performance of, compensation of, health
20 records of or specific complaints against an individual employee of the
21 association or an individual employee of a contractor of the association who
22 works under the direction of the association.

23 B. Notwithstanding any provision in the community documents, all
24 meetings of the association and the board shall be held in this state. A
25 meeting of the association shall be held at least once each year. Special
26 meetings of the association may be called by the president, by a majority of
27 the board of directors or by members having at least twenty-five per cent, or
28 any lower percentage specified in the bylaws, of the votes in the
29 association. Unless otherwise provided in the articles or bylaws of the
30 association, not fewer than ten nor more than fifty days in advance of any
31 meeting of the members the secretary shall cause notice to be hand-delivered
32 or sent prepaid by United States mail to the mailing address for each lot,
33 parcel or unit owner or to any other mailing address designated in writing by
34 a member. The notice shall state the time and place of the meeting. A
35 notice of any special meeting of the members shall also state the purpose for
36 which the meeting is called, including the general nature of any proposed
37 amendment to the declaration or bylaws, changes in assessments that require
38 approval of the members and any proposal to remove a director or an
39 officer. The failure of any member to receive actual notice of a meeting of
40 the members does not affect the validity of any action taken at that meeting.

41 C. Unless otherwise provided in the articles or bylaws of the
42 association, for meetings of the board of directors that are held after the
43 termination of declarant control of the association, notice to members of
44 meetings of the board of directors shall be given at least forty-eight hours
45 in advance of the meeting by newsletter, conspicuous posting or any other

reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

Sec. 5. Section 33-1805, Arizona Revised Statutes, is amended to read:

33-1805. Association financial and other records

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. **THE ASSOCIATION SHALL NOT CHARGE MORE THAN TWENTY DOLLARS PER HOUR FOR EACH HOUR INCURRED IN MAKING MATERIAL AVAILABLE FOR REVIEW.**

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.

2. Pending ~~or contemplated~~ litigation.

3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.

4. Personal, health and financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

Sec. 6. Section 33-1806, Arizona Revised Statutes, is amended to read:

33-1806. Resale of units; information required; definition

A. For planned communities with fewer than fifty units, a member shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

1 (a) The telephone number and address of a principal contact for the
2 association, which may be an association manager, an association management
3 company, an officer of the association or any other person designated by the
4 board of directors.

5 (b) The amount of the common regular assessment and the unpaid common
6 regular assessment, special assessment or other assessment, fee or charge
7 currently due and payable from the selling member.

8 (c) A statement as to whether a portion of the unit is covered by
9 insurance maintained by the association.

10 (d) The total amount of money held by the association as reserves.

11 (e) If the statement is being furnished by the association, a
12 statement as to whether the records of the association reflect any
13 alterations or improvements to the unit that violate the declaration. The
14 association is not obligated to provide information regarding alterations or
15 improvements that occurred more than six years before the proposed sale.
16 Nothing in this subdivision relieves the seller of a unit from the obligation
17 to disclose alterations or improvements to the unit that violate the
18 declaration, nor precludes the association from taking action against the
19 purchaser of a unit for violations that are apparent at the time of purchase
20 and that are not reflected in the association's records.

21 (f) If the statement is being furnished by the member, a statement as
22 to whether the member has any knowledge of any alterations or improvements to
23 the unit that violate the declaration.

24 (g) A statement of case names and case numbers for pending litigation
25 with respect to the unit filed by the association against the member or filed
26 by the member against the association. The member shall not be required to
27 disclose information concerning such pending litigation which would violate
28 any applicable rule of attorney-client privilege under Arizona law.

29 (h) A statement that provides "I hereby acknowledge that the
30 declaration, bylaws and rules of the association constitute a contract
31 between the association and me (the purchaser). By signing this statement, I
32 acknowledge that I have read and understand the association's contract with
33 me (the purchaser). I also understand that as a matter of Arizona law, if I
34 fail to pay my association assessments, the association may foreclose on my
35 property." The statement shall also include a signature line for the
36 purchaser and shall be returned to the association within fourteen calendar
37 days.

38 4. A copy of the current operating budget of the association.

39 5. A copy of the most recent annual financial report of the
40 association. If the report is more than ten pages, the association may
41 provide a summary of the report in lieu of the entire report.

42 6. A copy of the most recent reserve study of the association, if any.

43 B. A purchaser or seller who is damaged by the failure of the member
44 or the association to disclose the information required by subsection A of
45 this section may pursue all remedies at law or in equity against the member

1 or the association, whichever failed to comply with subsection A of this
2 section, including the recovery of reasonable attorney fees.

3 C. The association may charge the member a ~~reasonable~~ fee OF NO MORE
4 THAN TWENTY CENTS PER PAGE OF MATERIAL COPIED AND TWENTY DOLLARS PER HOUR OF
5 LABOR INCURRED to compensate the association for the costs incurred in the
6 preparation of a statement furnished by the association pursuant to this
7 section. The association shall make available to any interested party the
8 amount of any fee established from time to time by the association.

9 D. A sale in which a public report is issued pursuant to sections
10 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
11 from this section.

12 E. For THE purposes of this section, unless the context otherwise
13 requires, "member" means the seller of the unit title and excludes any real
14 estate salesperson or real estate broker who is licensed under title 32,
15 chapter 20 and who is acting as a salesperson or broker and also excludes a
16 trustee of a deed of trust who is selling the property in a trustee's sale
17 pursuant to chapter 6.1 of this title.